

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

|                                |   |                     |
|--------------------------------|---|---------------------|
| PAUL POGUE and                 | ) |                     |
| PAUL POGUE, in his capacity as | ) |                     |
| owner of SURVEYORS' PARK       | ) |                     |
|                                | ) |                     |
| Plaintiffs,                    | ) | CIVIL ACTION NUMBER |
|                                | ) |                     |
| v.                             | ) | 2:06-cv-148-MHT     |
|                                | ) |                     |
| TONY CHANDLER, et al.,         | ) |                     |
|                                | ) |                     |
| Defendants.                    | ) |                     |

AMENDED MOTION FOR DEFENDANTS' FIRST REQUESTS FOR  
ADMISSION TO BE DEEMED ADMITTED

Come now Defendants Tony Chandler and Danny Clark, by and through counsel, and amend their previous Motion for Defendants' First Requests for Admission to Be Deemed Admitted and renew their request for said admissions to be deemed admitted. As grounds therefore, the Defendants submit the following:

1. On August 21, 2006, the Defendants served a document entitled "Defendants' First Requests for Admission" upon the plaintiff. A copy of this document was previously furnished to the Court as Attachment B to

Exhibit D in the Brief in Support of Defendants' Motion to Dismiss or in the Alternative, for Summary Judgment.

2. On October 19, 2006, the Defendants received a document through the CM/ECF system entitled "Plaintiffs Response Involving Document Number Twenty Five." Attached to this document was another document which appears to be the Plaintiff's response to the Defendants' First Requests for Admission

3. The Plaintiff claims that he mailed a copy of his response on August 31, 2006. The attorney to whom the document purportedly was mailed did not receive any such document in the mail (see attached affidavit).

4. The certificate of mailing attached to the Plaintiff's response indicates that the response was mailed on "the 31<sup>st</sup> day of September, 2006." The Defendants respectfully request this Court to note that no such date exists on the calendar.

5. October 19, 2006 was the first date on which the Defendants received the Plaintiff's purported response to the Defendants' First Requests for Admission. The Plaintiff's response was not filed within the time allowed by Rule 36 of the Federal Rules of Civil Procedure.

6. The statements contained in the Plaintiff's purported response to the Defendants' First Requests for Admission are completely unresponsive to the questions posed by the Defendants.

7. Rule 36 states, "If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served."

Now therefore, the Defendants respectfully request this Court to find that the Defendants' First Requests for Admission are deemed admitted by operation of law under Rule 36 because of the Plaintiff's failure to comply with the requirements of said Rule.

Respectfully submitted,

TROY KING  
ATTORNEY GENERAL  
BY

s/Charles T. Conway  
Assistant Attorney General  
CON029

CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of October, 2006, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, and that a copy of the same has been sent by First Class Mail to the plaintiff:

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s/Charles T. Conway  
Assistant Attorney General

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